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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Mr. Caton:

Paging Network, Inc. (PageNet) PacTel Paging ("PacTel") and Arch Communications Group, Inc. ("Arch"), by their respective counsel, hereby request that the Federal Communications Commission ("FCC") institute a rulemaking to amend or delete Section 22.119 of the FCC's Rules.

PageNet, PacTel and Arch are each licensees authorized to provide both common and private carrier paging services. All three carriers are in the middle of building out substantial regional and/or national paging systems to complement their existing local and wide area systems. In designing these new high speed systems, each licensee independently determined that there would be substantial cost savings if, where substantial excess capacity existed, it were permitted to concurrently use transmitters authorized for use by the Common Carrier Bureau and the Private Radio Bureau, in the provision of these new regional and/or national services.

These carriers currently have unused capacity on certain transmitters operational in their existing paging systems, resulting from a combination of vastly increased spectral efficiencies. In particular, in newly served or small markets, there is typically less penetration than in long-served or very large markets, at least for some period of time. To the extent that they are overlaying new regional and/or national systems which could use these transmitters without any service degradation to existing or future common carrier subscribers, it is highly appropriate to permit these carriers to take advantage of the existing economies of scope.

In seeking permission for the joint use of private and common carrier transmitters, the undersigned carriers have each filed waivers addressing their unique circumstances. However, they also believe that the rule should be modified to permit such joint use without the necessity of seeking waivers.

To that end, these carriers have attached a draft Notice of Proposed Rulemaking, which proposes either abolition or modification of Section 22.119 to permit the more efficient use of common carrier facilities. See Attachment A. PageNet, PacTel and Arch respectfully request that the Commission give this letter and the attached draft Notice expeditious favorable

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Acting Secretary  
September 30, 1993  
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consideration. For the convenience of the Mobile Services Division, also enclosed is a 5 $\frac{1}{4}$ " floppy computer disk containing a Word Perfect 5.1 formatted draft Notice of Proposed Rulemaking.

Respectfully submitted,

PAGING NETWORK, INC.

PACTEL PAGING

By: Judith St. Ledger-Roty/EAT  
Judith St. Ledger-Roty  
Reed, Smith, Shaw & McClay  
1200 18th Street, N.W.  
Washington, DC 20036  
  
Counsel for Paging  
Network, Inc.

By: Mark A. Stachiw/EAT  
Mark A. Stachiw  
Attorney  
PacTel Paging  
12221 Merit Dr., Ste. 800  
Dallas, TX 75251

By: Carl W. Northrop/EAT  
Carl W. Northrop  
Bryan Cave  
700 13th St., N.W.  
Suite 700  
Washington, DC 20005

Counsel to PacTel Paging

ARCH COMMUNICATIONS GROUP, INC.

By: Carl W. Northrop/EAT  
Carl Northrop  
Bryan Cave  
700 13th St., N.W.  
Suite 700  
Washington, DC 20005

Counsel to Arch  
Communications Group, Inc.

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

**CC Docket No. 93-\_\_**

In the Matter of

Amendment of Part 22  
of the Commission's Rules  
to Delete Section 22.119  
Pertaining to the Concurrent  
Use of Transmitters in  
Common Carrier and Non-  
Common Carrier Services

In re Requests of

**Paging Network, Inc.**

**MSD 93-\_\_**

**PacTel Paging**

**93-\_\_**

**Arch Communications Group, Inc.**

**93-\_\_**

For Waiver of Section  
22.119 to Dually License  
Paging Transmitters Under  
Part 22 and Part 90 of the  
Commission's Rules

**NOTICE OF PROPOSED RULE MAKING  
AND  
ORDER GRANTING PETITION FOR WAIVER**

Adopted: October \_\_, 1993

Released: October \_\_, 1993

Comments Due: October \_\_, 1993

Reply Comments Due: November \_\_, 1993

By the Commission:

**I. INTRODUCTION**

1. This Notice of Proposed Rulemaking proposes to modify Section 22.119 of the Commission's Public Land Mobile Service (PLMS) Rules, which now prohibits the concurrent licensing and use of transmitters for common carrier and non-

common carrier purposes.<sup>1/</sup> The proposed modification will permit joint use of common carrier paging transmitters in the private carrier paging service under circumstances where carriers are offering distinct services on different frequencies (e.g., nationwide vs regional service; local vs. regional service) and will enjoy substantial economies by using shared transmitters.<sup>2/</sup> In addition, we are granting interim waivers of Section 22.119 to Paging Network, Inc. (PageNet), PacTel Paging (PacTel), and Arch Communications Group, Inc. (Arch)<sup>3/</sup> to the extent set forth below, during the pendency of this rule making. This action will allow them to operate transmitters presently licensed for common carrier paging purposes to also provide private carrier paging service as long as the geographic coverage areas of the common carrier and private carrier systems are not substantially the same.<sup>4/</sup>

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<sup>1/</sup> See Appendix B for the text of the proposed rule change.

<sup>2/</sup> Assuming the revision of Section 22.119 is adopted, similar language would be added to Section 22.375, as proposed in CC Docket No. 92-115, *Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, which would replace Section 22.119.

<sup>3/</sup> See Request for Waiver filed by Paging Network, Inc., April 6, 1993; amended July 15, 1993 (PageNet Waiver Request); Request for Waiver filed by PacTel Paging, August 31, 1993 (PacTel Waiver Request); Request for Waiver filed by Arch Communications Group, Inc., September 22, 1993 (Arch Waiver Request). Each company currently is a licensee of numerous Part 22 and Part 90 facilities. As explained below, a grant of these waivers will serve the public interest.

<sup>4/</sup> It is not the intent of the proposed rule change or the interim waivers to permit the shared use of transmitters to provide geographically equivalent public and private paging services. The intent is to facilitate the use of shared transmitters when the services offered on the subject frequencies are different in kind (i.e. local vs. regional service; regional vs. nationwide service).

## II. BACKGROUND

2. Section 22.119<sup>5/</sup> of the PLMS Rules prohibits the concurrent licensing and use of a transmitter licensed to provide common carrier services under Part 22 of the Rules for non-common carrier communication purposes. Although the regulatory history is silent on the purpose of this rule, we believe it was adopted to assure that the capacity of radio common carrier transmitters is devoted to common carrier services in an effort to protect subscribers to these services from unnecessary delays and interruptions in service.<sup>6/</sup>

## III. DISCUSSION

3. Several developments in the paging industry have undermined the rationale for this prohibition in some circumstances, causing us to propose an exception to the rule. Advances in technology have caused transmitter capacity to increase significantly. For example, improvements in digital transmission techniques and increases in transmission rates, coupled with advanced store and forward technologies, enable a single transmitter to serve over 300,000 paging units. According to PacTel, it is working with manufacturers to develop 6400 bps transmission rates which will accommodate over 800,000 subscribers on a single paging channel.<sup>7/</sup> PageNet states that it currently has deployed technology which can accommodate 400,000

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<sup>5/</sup> 47 C.F.R. §22.119 (1992) states:

Transmitters licensed for operation in services governed by this part [22] may not be concurrently licensed or used for non-common carrier communication purposes. However, mobile units may be concurrently licensed or used for non-common carrier purposes provided that the transmitter is type-accepted for use in each service.

<sup>6/</sup> This rule was originally in Part 21 of the Commission's rules, and was incorporated into Part 22 in 1979 when the public mobile service and public fixed service rules were separated into discrete rule parts. See *Domestic Public Fixed Radio Services and Public Mobile Radio Services*, FCC Docket No. 79-595, 46 RR 2d 652 (1979). The rule section survived the last major revision of Part 22, but largely without comment. See *Revision and Update of Part 22 of the Public Mobile Radio Services Rules*, 95 FCC 2d 769 (1983).

<sup>7/</sup> PacTel Waiver Request, p. 2, n. 3.

paging units on a single 25 kHz channel.<sup>8/</sup> These dramatic increases in capacity reduce the need for a transmitter to be devoted on a full time basis to common carrier uses in order to provide high quality service to the public, particularly in markets where total capacity exceeds current demand.

4. To meet marketplace demand for wider-area coverage, some licensees have begun to offer regional and national private carrier paging service as an overlay to their more localized common carrier paging services. The present rule requires such carriers to construct dedicated private carrier facilities which are duplicative of their existing local systems thereby imposing unnecessary costs on carriers, which could result in higher subscriber charges.<sup>9/</sup>

5. Also, we expect the penetration rate for nationwide and broad regional services to be less at the outset than for long established local services. In markets where an operator's local common carrier transmitters are not loaded to capacity (e.g., in markets the licensee has recently entered or in smaller markets) there are substantial economies the licensee could obtain by initially sharing transmitters when building out a regional or nationwide system without in any way diminishing the licensee's current or projected quality of service.

6. Under these circumstances, the present requirement appears to be contrary to recent Commission actions which encourage licensees to devote unused capacity to auxiliary or incidental communications services that will meet public needs.<sup>10/</sup>

7. Furthermore, the traditional distinctions between common carrier and non-common carrier paging services have

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<sup>8/</sup> PageNet Waiver Request, p. 3.

<sup>9/</sup> For example, in its Petition, PacTel estimates that the cost to construct its entire nationwide and regional PCP systems on a stand-alone basis will be approximately \$13 million. PacTel Waiver Request, p.3. In addition, PageNet estimates that it can save or defer expenditures up to \$8 million dollars on its current build out of large regional systems. PageNet Waiver Request, p.4.

<sup>10/</sup> *Revision and Update of Part 22 of the Public Mobile Radio Service Rules*, 95 FCC 2d 769, 816-819 (1983) (adopting 47 C.F.R. §22.308); *Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service*, 3 FCC Rcd 7033 (1988) (adopting 47 C.F.R. §22.930).

narrowed due to technological and regulatory developments. For instance, private carrier paging licensees are now permitted to sell to individuals, previously the exclusive purview of common carrier licensees.<sup>11/</sup> In addition, we note that the Omnibus Budget Reconciliation Act of 1993 (the "1993 Budget Act")<sup>12/</sup> recently enacted by Congress further eliminates distinctions between private and common carrier mobile services. The 1993 Budget Act amends the Communications Act of 1934 to specify a single "commercial mobile service".<sup>13/</sup>

8. Finally, the paging industry has become increasingly competitive. Allocations of new spectrum,<sup>14/</sup> the relaxation of federal and state barriers to entry,<sup>15/</sup> and the growth of subscriber demand have resulted in numerous well-financed competing paging entities in virtually every market. These companies compete on the basis of geographic service area, customer service, enhanced services, and price. This highly competitive environment encourages paging carriers to provide an acceptable quality of service or risk losing customers to competitors. These competitive incentives provide us with additional assurances that service to existing customers will not suffer from the joint use of transmitters in the limited circumstances we propose.

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<sup>11/</sup> See *Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals*, 8 FCC Rcd 4822 (1993).

<sup>12/</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312 (1993).

<sup>13/</sup> 47 U.S.C. §332(c)(1) (1993). Congress also required the Commission to adopt revised rules governing the private land mobile services and the new commercial mobile services by August 1994.

<sup>14/</sup> E.g., *Amendment of Parts 2 and 22 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band and to Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Services*, 89 FCC 2d 1337 (1982).

<sup>15/</sup> See, e.g., *Public Mobile Radio Services*, 82 FCC 2d 152 (1980) (Elimination of financial qualifications showing); *Public Mobile Radio Services*, 69 FCC 2d 398 (1978) (Elimination of prior state certification requirement); *Revision and Update of Part 22 of the Public Mobile Radio Services Rules*, 95 FCC 2d 769 (1983) (Reducing application requirements).

9. We tentatively conclude because of these developments that permitting a single transmitter to operate on both common carrier and private carrier paging channels will cause no disruption or impairment of service to existing Part 22 subscribers in those limited circumstances where joint use will facilitate the provision of national and/or regional service as an overlay to local service.<sup>16/</sup>

#### IV. WAIVER REQUESTS

##### A. Background

10. PageNet seeks a waiver of Section 22.119 of the Commission's PLMS Rules to permit it to operate approximately 350 of its common carrier transmitters on a shared basis with its private carrier paging frequency 929.6125 until those transmitters reach 75% capacity.<sup>17/</sup> PacTel seeks a waiver of Section 22.119 of the Commission's PLMS Rules to permit it to install PCP frequencies in its existing Part 22 common carrier paging transmitters until either (a) the two services are combined and Section 22.119 is eliminated, or (b) the multifrequency transmitters are loaded to seventy-five percent

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<sup>16/</sup> We also seek comment on whether there are circumstances where it would be inappropriate to permit shared use. We are particularly interested in understanding the extent to which modification of the rule would inappropriately increase warehousing of frequencies, and whether there are safeguards which we should consider if we conclude that modification of the rule would create incentives for abuse. For example, should sharing be appropriate only when certain loading criteria are met, or should transmitters only be allowed to be shared for a certain number of years?

<sup>17/</sup> In support of its waiver request, PageNet states that it is building out an extensive private carrier paging system using high speed, state-of-the-art technology. Upon completion of Phase I, PageNet will operate approximately 1109 geographically dispersed private carrier paging transmitters which, in many locations will mirror PageNet's existing common carrier transmitters that have unused capacity. PageNet states that this capacity can be used to serve the needs of its nationwide and regional private carrier paging subscribers with no diminution in service to Part 22 subscribers, yet result in a capital savings of approximately \$8,064,000, and monthly operating expenses of \$86,400. See PageNet Waiver Request at pp. 2-4.

(75%) of available airtime.<sup>18/</sup> Arch requests a waiver of Section 22.119 to permit it to operate frequency-agile transmitters capable of alternating between transmission of signals to both common carrier and private carrier subscribers to permit the inclusion of PCP frequencies capable of providing broad regional and nationwide service in Part 22 transmitters offering local service.<sup>19/</sup>

## **B. Discussion**

11. The requirements for waiver requests are set forth in Section 22.19 of the Commission's Rules. An applicant must demonstrate that: (a) the underlying purpose of the rule will

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<sup>18/</sup> In support of its waiver request, PacTel states that many of its subscribers are demanding nationwide and regional coverage extending beyond PacTel's current coverage areas. Because PacTel's common carrier frequencies were not available nationwide or over these larger regions, PacTel applied for and was granted nationwide Part 90 PCP authorizations. PacTel has begun constructing its nationwide and regional PCP paging systems. PacTel states that the waiver will allow it to reduce its operating costs by eliminating the need for unnecessary construction of transmitters for its nationwide and regional PCP systems. As noted, PacTel estimates these construction costs at \$13 million. PacTel projects that the first several years of operation will result in substantial losses from depreciation and site rent which must be recouped in the service price. If PacTel is permitted to make full use of its existing infrastructure, it will realize significant costs savings, and would be able to pass these savings along to its subscribers by offering lower prices. PacTel Waiver Request at pp. 2-4.

<sup>19/</sup> In support of its waiver request, Arch states that it has undertaken to develop a nationwide paging system to satisfy the needs of its customers; however, the lack of a common carrier nationwide paging channel has caused Arch to develop a nationwide private carrier system. Arch presently has applications granting or pending for authority to construct facilities operating on three private carrier frequencies (929.8375, 929.3625, and 929.7875 MHz) at approximately 1,300 sites throughout the nation. Many of these sites are identical to locations where Arch currently owns and operates Part 22 common carrier facilities on 931 MHz. Arch seeks to avoid unnecessary duplication of facilities and states that it will greatly reduce operating costs if allowed to share transmitters between common and private carrier services. Arch Waiver Request at pp. 2-3.

not be served in the absence of a waiver, and that grant of the waiver is in the public interest; or (b) the special facts and circumstances of a particular case render application of the rule inequitable and contrary to the public interest and that there is no reasonable alternative. 47 C.F.R. §22.19. See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

12. PageNet, PacTel, and Arch have satisfied the requirements of Section 22.19 of the Rules under both alternatives. Each is currently in the process of constructing nationwide and/or regional PCP systems with coverages extending beyond existing licensed Part 22 systems. The waiver sought by each will permit it to use its existing infrastructure, thereby achieving a significant cost savings which will result in the provision of service sooner and at lower rates to its subscribers. Granting the waivers will also benefit the public by reducing construction costs and carrier resources devoted to paging services, reducing the number of transmitter sites necessary and thereby lowering the costs at which service is made available to the public. Reducing the number of sites also will reduce environmental and civic concerns regarding multiple transmitters on sites. There are no reasonable alternatives to the waiver that could achieve these public interest benefits in the necessary time frame.<sup>20/</sup>

13. Furthermore, the underlying purpose of the rule will not be undermined by granting the instant waivers. In the Notice of Proposed Rule Making, *supra*, we have proposed to modify Section 22.119 to permit carriers to use common carrier transmitters for joint private and common carrier use in those limited circumstances where it will facilitate the provision of nationwide and/or regional service as an overlay to existing local service.

14. In sum, PacTel, PageNet, and Arch have demonstrated the appropriateness of permitting them to share their common carrier and private carrier paging transmitters in circumstances where such sharing will facilitate the provision of national and/or regional service as an overlay to local services. We have not adopted any timeframe in which these waivers will expire. These waivers will be subject to our actions in this proceeding, wherein we will consider whether such sharing should be permitted indefinitely, or until carriers meet a loading standard, or whether there should be some measure other than time

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<sup>20/</sup> All three carriers have indicated that time is of the essence in connection with their requests due to impending construction deadlines.

and/or loading.<sup>21/</sup> Therefore, PageNet, PacTel and Arch will be allowed during the pendency of this rulemaking, to operate transmitters authorized under Part 22 for both common carrier and private carrier paging in accordance with their respective waiver requests.<sup>22/</sup>

## V. CONCLUSIONS

15. We propose to modify Section 22.119 of the Rules to allow the dual use of transmitters for common carrier operations authorized under Part 22 and for private carrier operations authorized under Part 90 in those limited circumstances where joint use will facilitate the provision of national and/or regional service as an overlay to local service. We believe that this proposed rule change (see Appendix B, *infra*) would promote more effective use of carrier resources. We request comments on the proposals addressed in this Notice. We also find it in the public interest to waive Section 22.119 to allow PacTel, Arch, and PageNet to operate their authorized Part 22 transmitters as set forth herein.

## VI. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED THAT pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j), 303(r), this Notice of Proposed Rule Making IS ISSUED.

17. IT IS FURTHER ORDERED THAT the Secretary shall cause a copy of this Notice to be sent to the Chief Counsel for Advocacy of the Small Business Administration.

18. IT IS FURTHER ORDERED THAT the waiver request filed by Paging Network, Inc. IS GRANTED to the extent described herein.

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<sup>21/</sup> The grants of waivers to PageNet, PacTel and Arch in this order are without prejudice to any future action the Commission may take to restrict the use of common transmitters in multiple services to deter warehousing.

<sup>22/</sup> We note that the PacTel waiver request can be construed as requesting permission for the joint use of private and common carrier facilities at all common locations without limitation. The waiver granted herein is limited to those situations in which the common carrier and private carrier frequencies are part of systems which do not have substantially the same coverage areas. To the extent that the PacTel waiver sought relief beyond that described above, it is denied.

19. IT IS FURTHER ORDERED THAT the waiver request filed by PacTel Paging IS GRANTED to the extent described herein.

20. IT IS FURTHER ORDERED THAT the waiver request filed by Arch Communications Group, Inc. IS GRANTED to the extent described herein.

21. For further information, contact \_\_\_\_\_, at (202) \_\_\_\_\_, Mobile Services Division, Common Carrier Bureau.

FEDERAL COMMUNICATIONS COMMISSION

William Caton  
Acting Secretary

## **APPENDIX A**

### **PROCEDURAL MATTERS**

#### **Ex Parte Rules -- Non-Restricted Proceeding**

This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, as long as they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

#### **Comment Dates**

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before October \_\_, 1993 and reply comments on or before November \_\_, 1993. To file formally in this proceeding you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 1919 M St., N.W., Washington, D.C. 20554.

#### **Initial Regulatory Flexibility Analysis**

##### **Reasons for Action**

This rule making proceeding is initiated to obtain comment regarding changes in the provision of common carrier and private carrier paging services through the use of a single transmitter in those limited circumstances where joint use is necessary to promote the overlay of regional and/or national services.

##### **Objectives**

The purpose of the proposed rule is to promote economic efficiencies for carriers in providing paging services with overlapping geographic coverage, in circumstances where subscribers to service will not suffer any degradation of service.

### **Legal Basis**

The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j), 303(r).

### **Reporting, Recordkeeping and Other Compliance Requirements.**

None.

### **Federal Rules Which Overlap, Duplicate or Conflict with These Rules.**

None.

### **Description, Potential Impact, and Number of Small Entities Involved.**

A rule change in this proceeding would benefit providers of common carrier and private carrier paging services by reducing costs. A number of these providers are small entities.

### **Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives.**

We have determined no specific alternatives.

## APPENDIX B

### PROPOSED RULES

Title 47 of the Code of Federal Regulations, Part 22, is amended as follows:

#### Part 22 - Public Mobile Service

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303.

2. Section 22.119 is amended to read as follows:

Transmitters licensed for operation in services governed by this part may not be concurrently licensed or used for non-common carrier communication purposes, **except for private carrier paging services where the coverage area of the private carrier paging system and the common carrier paging system are not substantially the same.** Mobile units may be concurrently licensed or used for non-common carrier purposes provided that the transmitter is type-accepted for use in each service.

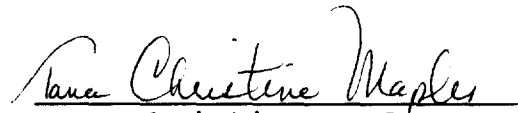
CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 30th day of September, 1993, caused copies of the foregoing **Notice of Proposed Rulemaking and Order Granting Petition for Waiver** to be delivered by hand to the following:

Gerald P. Vaughan  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, DC 20554

Myron C. Peck  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 644  
Washington, DC 20554

John Cimko, Jr., Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 644  
Washington, DC 20554

  
Tana Christine Maples

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